NO. 79-6846

IN THE UNITED STATES SUPREME COURT

JOHN CREACH,

Petitioner,

-vs-

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

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SUPREME COURT, U.S.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

EXHIBITS

NOTICE & CERTIFICATE OF SERVICE

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NO.

IN THE UNITED STATES SUPREME COURT
OCTOBER TERM 1979

JOHN CREACH,

Petitioner,

-vs-

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF ILLINOIS

The Petitioner, JOHN CREACH, by undersigned counsel, petitions for a Writ of Certiorari to review the judgment and order of the Supreme Court of the State of Illinois entered on February 22, 1980, reversing the decision of the Appellate Court for the State of Illinois, First District, which reversed Petitioner's conviction for murder.

OPINIONS BELOW

The opinion of the Supreme Court of Illinois has not been reported, and is set forth in Appendix B attached hereto. The opinion of the Appellate Court of Illinois for the First District has been reported at 69 Ill.App.3d 874, 387 N.E.2d 762 (1979) and is set forth in the appendix attached hereto as Appendix A. Rehearing March 28, 1980.

JURISDICTION

The judgment of the Supreme Court of the State of Illinois reversing the decision of the Appellate Court for the

State of Illinois, First District, which reversed Petitioner's conviction, was entered on February 22, 1980. rehearing den. March 28 This Petition for Writ of Certiorari is timely filed within 90 days of the judgment. The jurisdiction of this Court is invoked under 28 U.S.C.§1257(3).

QUESTIONS PRESENTED

I. Did the Illinois Supreme Court err and establish a dangerous precedent in weighing evidence de novo on the question of probable cause to arrest Petitioner, in complete disregard of the findings of the trial court and Appellate Court below and in disregard of well established state and federal appellate procedure, plainly violating Petitioner's rights under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

II. Even if the Supreme Court of Illinois was correct in assuming a dangerous new jurisdiction to weigh de novo the evidence on the issue of probable cause, did the Supreme Court err in applying the test in Dunaway v. New York in reaching its conclusion that probable cause sufficient under the Fourth and Fourteenth Amendments to the United States Constitution in fact existed.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment IV:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

United States Constitution, Amendment V:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject to the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

United States Constitution, Amendment XIV:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

28 U.S.C. Sec.1257. State courts; appeal; certiorari:

"Final judgments or decrees rendered by the highest court of the state in which a decision could be had, may be reviewed by the Supreme Court as follows: ...(3) by writ of certiorari, where the validity of the treaty or statute of the United States is drawn in question or where the validity of the state statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

STATEMENT OF THE CASE

In the interest of judicial economy, Petitioner incorporates herein as his statement of the case the facts set out in the decision of the Appellate Court of the State of Illinois and the Supreme Court of Illinois which are set forth in the Appendix attached hereto.

REASONS FOR GRANTING THE WRIT

I. The Illinois Supreme Court established a dangerous precedent in weighing evidence de novo on the question of probable cause to arrest Petitioner, in complete disregard of the findings by the trial court and Appellate Court below and in disregard of well established state and federal appellate procedure, plainly violating Petitioner's rights under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

It is universally recognized in this country that appellate review of criminal proceedings is confined to questions of law in that findings of fact made by the trial court may not be overturned on review unless they are clearly unreasonable or erroneous. People v. Dorney, 17 Ill.App.3d 785, 308 N.E.2d 646 (4 Dist., 1974). In clear contravention of this well established rule, the Illinois Supreme Court re-weighed the evidence regarding probable cause to arrest Petitioner and completely ignored the findings of the trial court below on the issue. The Illinois Supreme Court's unprecedented and alarming act subjected Petitioner to double jeopardy and deprived him of a fair trial in violation of his constitutional rights under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

The jurisdiction of the reviewing court is succinctly stated by the Court of Appeals for the Seventh Circuit in United States v. Johnson, 142 F.2d 588 (1944):

> "Certainly we do not have the right to consider the record for the purpose of arriving at an independent finding and judgment of our own which we may substitute for that of the trial judge. We do not sit to try the case de novo. We are to review, as always, for errors of law, which review includes a review of the trial court's action for the purpose of determining whether or not it abused its discretion in reaching the conclusion it did." Id. at 591.

This view of the reviewing court's function was expressly approved by the United States Supreme Court in United States v. Johnson, 327 U.S.106, 113 (1946). In addition, the United States Supreme Court stated that "while the Appellate Court might intervene when the findings of fact are wholly unsupported by evidence (citations omitted), it should never do so where it does not clearly appear that the findings are not supported by any evidence." Id. at 111-112. Numerous decisions by the Illinois Supreme Court explicitly recognized that the Illinois Supreme Court does not review disputed issues of fact. See, for example, People v. Berland, 74 Ill.2d 286, 385 N.E.2d 649, 660 (1978); Coutrakon v. Adams, 31 Ill.2d 189, 201 N.E.2d 100, 101 (1964); Walden v. Chicago and North Western Ry.Co., 411 Ill.378, 104 N.E.2d 240 (1952); Williams v. Consumers Co., 352 Ill.51, 185 N.E.217 (1933). In Berland, supra, the court stated the following rule:

> "It has frequently been indicated that where this court acquires jurisdiction for any reason, it has jurisdiction to pass upon all questions, except those requiring a weighing of the evidence, proper to be passed upon and disposed of in the case." Id. at 660.

In utter disregard of this universal rule and all

precedent, the Illinois Supreme Court re-weighed evidence regarding probable cause to arrest Petitioner and ignored specific findings of fact made by the trial court below. The Illinois Supreme Court's error was particularly grievous in that the statements and other evidence which were the product of Petitioner's arrest constituted the bulk of the evidence against Petitioner at trial. Prior to trial, Petitioner moved to suppress this evidence on the ground that it was the product of an unlawful arrest; specifically, Petitioner contended the police violated his Fourth Amendment rights when, lacking probable cause to arrest Petitioner, they took him to the police station for interrogation purposes. The trial court initially found that there was probable cause to arrest Petitioner; but subsequently stated, in denying a motion to reconsider, that the police acted properly despite a lack of probable cause. The trial court's findings are set out in detail in People v. Creach, 25 Ill.Dec.886, 69 Ill.App.3d 874, 387 N.E.2d 762,767-768 (1979). The trial court found, in part:

> (a) "...There is a serious question as to whether or not there was probable cause for arrest."
>
> (b) "It was not certain that either or both of the boys were involved in the homicide of the victim at that point."
>
> (c) "I don't believe that there was appropriate evidence for -- appropriate evidence for a warrant to issue because it still is not clear that these boys were in any way related to the crime." Id.

Upon Petitioner's appeal of his conviction, the Appellate Court reversed and remanded for a new trial on the ground that the information available to the police at the time of Petitioner's arrest "was manifestly insufficient to establish probable cause," and that the taint of the illegal arrest was not

dissipated by intervening circumstances and, accordingly, the resultant statements and evidence should have been suppressed. The State thereafter sought and received leave to appeal to the Illinois Supreme Court. The Illinois Supreme Court summarily disregarded the specific findings of the trial court below on the probable cause issue and substituted its own opinion on the issue for that of the trial court and the Appellate Court, and reversed the portion of the Appellate Court judgment which reversed Petitioner's conviction. This action of the Illinois Supreme Court in re-weighing the evidence of probable cause de novo was plainly in excess of its jurisdiction and violated Petitioner's rights under the Fourth, Fifth and Fourteenth Amendments.

The Illinois Supreme Court's usurpation of the powers of the trial court not only violates well established rules with respect to appellate procedure, but subjected Petitioner to double jeopardy and deprived him of a fair trial. It is well settled that the double jeopardy clause of the Fifth Amendment does not preclude the Government's re-trying a defendant whose conviction is set aside because of an error in the proceedings leading to the conviction. The rule is explicitly stated in United States v. Ball, 163 U.S.662, 671-672, 16 S.Ct.1192,1195, 41 L.Ed.300 (1896), a case in which defendants were re-indicted after the United States Supreme Court had found the original indictment to be defective. And see United States v. Wilson, 420 U.S.332,344-345, 95 S.Ct.1013, 43 L.Ed.2d 232 (1975); United States v. Tateo, 377 U.S.463, 84 S.Ct.1587, 12 L.Ed.2d 448 (1964). However, unlike the procedure upheld in Ball, supra, the procedure followed by the Illinois Supreme Court in the present case exposed Petitioner to multiple prosecutions, prosecutions at both the trial level and the appellate level. Here, the Supreme Court's action in

weighing the evidence de novo offered the State a second opportunity to try its case. If the Supreme Court had weighed the evidence and found no probable cause, the State would have had a third opportunity to place Petitioner on trial upon remand of the case for a new trial. The additional opportunity thus afforded the State by the Illinois Supreme Court, plainly flies in the face of the double jeopardy clause. Further, the Supreme Court's action in re-weighing the evidence of probable cause, traditionally reserved to the finder of fact, improperly denied Petitioner his due process right to a fair trial following reversal of his conviction and remand for a new trial.

In summary, the Illinois Supreme Court's unprecedented action in re-weighing evidence de novo was in excess of its established jurisdiction and violated Petitioner's rights under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

* * *

II. Even if the Supreme Court of Illinois was correct in assuming a dangerous new jurisdiction to weigh de novo the evidence on the issue of probable cause, its erroneous conclusion failed the test in Dunaway v. New York, as no probable cause sufficient under the Fourth and Fourteenth Amendments to the United States Constitution in fact existed.

The facts adduced at the hearing on the motion to suppress, which admittedly constituted the sum total of the officer's knowledge at the time of the arrest, could not warrant a person of reasonable caution in the belief that

Petitioner had murdered Delores Irion.

By 9:30 or 9:45 a.m. on September 26, 1973, when Petitioner Creach and his co-defendant, Ruppert, were taken into custody, the arresting officers knew that Delores Irion's body had been found near some railroad tracks in Evanston, Illinois, and that her death had occurred between midnight and 7:00 a.m. on that date. (R.139,824-834,140-141) The police knew that Petitioner was Irion's boyfriend, had lived with her off and on in the weeks before her death, and that he regularly enjoyed the use of her automobile, a 1966 Cadillac convertible. (R.139,140,149-150) They knew the automobile was missing. The police heard from Petitioner's mother that Petitioner and a friend, Tom, had driven the car to Ohio to visit relatives. They knew that, when informed of Irion's death, Petitioner had told his mother that he had last seen Irion alive at about 1:00 a.m. on September 25, 1973, before leaving for Ohio. (R.138) They knew that he agreed to return to Chicago promptly. (R.111)

These facts could in no sense warrant a person of reasonable caution in the belief that Petitioner committed the murder of Delores Irion. In view of Petitioner's customary use of the automobile with Delores Irion's permission, the officers had no basis for speculating that on this occasion Irion had denied her permission. The only reasonable explanation was simply that Petitioner had acquired the automobile in the usual manner, that is, with its owner's permission.

The officer's lack of probable cause is even more apparent with regard to the killing itself. There were no witnesses to the killing to give any sort of description of her assailant. There was no physical evidence in any way linking Petitioner to the killing or to the scene where her body was found. Nor did any information known to the officers link the Cadillac with the killing or the scene where the body was found. The police had no evidence that Petitioner had a motive

to murder Delores Irion, that he was prone to argue with her, or that he had threatened her in any way.

The lack of probable cause for Petitioner's arrest is further underlined by the Illinois Supreme Court's findings with regard to his co-defendant. In the course of its de novo examination of the evidence, the Illinois Supreme Court determined that probable cause did not exist for the arrest of co-defendant Tom Ruppert, who was convicted of armed robbery and sentenced to four to twelve years. They had found that the only evidence available to the arresting officers regarding Ruppert's involvement was his physical description and that he was a friend of Creach and present with Creach in Ohio. The additional fact applicable not to Ruppert but rather only to Petitioner, who was convicted of murder and armed robbery and sentenced to thirty-five to seventy years, was essentially that he was Irion's boyfriend. This bit of information could not suffice to elevate the then-known facts to the level of probable cause.

The only other information that even remotely connected Petitioner with the death of Delores Irion was that he had seen her alive at approximately 1:00 a.m. on September 25th. The police knew of no one who had seen Irion alive later than 1:00 a.m. They had, however, no way to pinpoint the time of her death and could state definitely only that it occurred between midnight and 7:00 a.m. on that date. That Petitioner may have been the last person to see her alive, possibly six hours before she died, in no way constituted probable cause to believe him responsible for her death. At the time of the arrest, every bit of information the police had obtained was totally consistent with Petitioner's innocence. Only on the basis of an entirely unreasoned, inarticulable "hunch" could the officer have suspected Petitioner of killing or robbing Delores Irion. Under these circumstances, probable cause is utterly lacking. As the trial judge, in discussing the Defendant's motion to suppress,

after hearing all the evidence, stated:

> "I don't believe that there was appropriate evidence for -- appropriate evidence for a warrant to issue because it still was not clear that those boys were in any way related to the crime." (R.598)

A lack of "appropriate evidence" is synonymous with a lack of probable cause. At most it can be said that the officers had reason to wish to question Petitioner for any information he might have leading to discovery of the identity of the killer or killers. Even the detectives would not admit to arresting Petitioner, choosing rather to say that Petitioner had been "taken into custody for questioning." (R.106,156) Petitioner was arrested on the morning of September 26, 1973, at a time when the authorities lacked the probable cause to do so.

CONCLUSION

For the foregoing reasons, Petitioner respectfully prays that his Petition for Writ of Certiorari be granted.

Respectfully submitted,

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NO. 76-834)
76-835) Consolidated

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,	)	APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY.
v.	)	
JOHN CREACH and THOMAS RUPPERT, Defendants-Appellants.	)	HONORABLE FRED G. SURIA, PRESIDING.

MR. JUSTICE ROMITI delivered the opinion of the court:

John Creach and Thomas Ruppert, the defendants, were charged with the murder and armed robbery of Delores Irion. Following their joint trial before a jury, defendant Creach was found guilty of murder and armed robbery and defendant Ruppert was found guilty of armed robbery. Creach was sentenced to 35 to 70 years on each charge, to run concurrently, and Ruppert was sentenced to 4 to 12 years for armed robbery. On appeal the following issues are raised: (1) both defendants contend they were arrested illegally and without probable cause; (2) both defendants contend statements they made should have been suppressed because they were not fully warned of their rights; (3) defendant Ruppert advances two additional reasons for suppression of his statements: (a) the police made no attempt to notify his parents of his arrest, and (b) he did not knowingly and intelligently waive his rights; (4) both defendants contend the trial court erred in failing to suppress evidence obtained as a result of what they assert were illegal arrests; (5) defendant Creach contends the trial court also erred by allowing into evidence statements made by defendant Ruppert which implicated Creach where Ruppert did not testify and thus was not available to Creach for cross-examination; (6) both defendants assert that their guilt was not established beyond a reasonable doubt, although on two distinct grounds: (a) Creach argues his sanity was

not proven, and (b) Ruppert argues that his accountability for the acts of Creach was not proven; (7) finally, defendant Ruppert contends the trial court erred in refusing to give his tendered instructions on compulsion, accountability, and accessories after the fact.

We reverse and remand for a new trial.

The body of Delores Irion was found lying near the CTA tracks in Evanston at about 7:00 a.m. on September 25, 1973. Detective Carlos Mitchem of the Evanston Police Department spoke that day to Dolly Moore, defendant Creach's mother, who lived at 5717 North Magnolia Street in Chicago. She told Mitchem that her son had been living with the victim in the victim's apartment for the last four weeks. During that time he had driven the victim's car, and had been driving the victim to and from work. Mrs. Moore had spoken to her son in Ohio by telephone. He told her that he was there with a friend named Tom, and that he had last seen Irion alive when he left for Ohio in her 1966 Cadillac. The police investigation had already revealed that the automobile was missing. Detective Mitchem related this conversation to Detective Douglas Glanz of the Evanston Police Department on the evening of September 25. The next morning at about 8:00 a.m. Glanz and his partner, Detective John Birkenheier went to Creach's residence. They spoke to Mrs. Moore, who related what she had told Detective Mitchem, also stating that she had told Creach to come home and he said he would do so right away. The officers told Mrs. Moore that when the defendants returned, they intended to take them to the Evanston police station for questioning. Mrs. Moore asked if she could accompany them and they agreed to let her do so. Mrs. Moore showed them a photograph of Creach. Earlier Detective Mitchem had described Ruppert to Glanz as a short youth with fair hair.

At about 9:30 A.m. on September 26 the officers observed Creach and Ruppert approaching Creach's home on foot. The officers got out of their unmarked squad car, approached the defendants, identified themselves as police officers, and told them they were going to return them to Evanston for questioning. They also frisked the defendants for weapons. Defendants were ultimately transported to the Evanston station and questioned. The statements obtained from them constituted the major evidence used against them at trial.

1.

The State contends that defendants were not arrested at the time of their encounter with the police at the Magnolia Street location. By statute in Illinois "[a]n arrest is made by an actual restraint of the person or by his submission to custody." (Ill. Rev. Stat. 1975, ch. 38, par. 107-5(a).) Because the existence of restraint or of a custodial situation is not always unambiguously clear, the courts of this State have found it necessary to elaborate some of the elements of an arrest. A common listing of elements includes: (1) authority to arrest; (2) assertion of that authority with intention to effect an arrest; and (3) restraint of the person to be arrested. (People v. Mirbelle (1934), 276 Ill. App. 533; People v. Howlett (1971), 1 Ill. App. 3d 902, 274 N.E.2d 885; People v. Robbins (1977), 54 Ill. App. 3d 298, 369 N.E.2d 577, 12 Ill. Dec. 80.) Our Supreme Court has recently focussed on two elements involving the perceptions of the parties in determining whether a police encounter constituted an arrest: the intent of the officer and whether a reasonable innocent man in the defendant's situation would have considered himself under arrest. (People v. Wipfler (1977), 68 Ill. 2d 158, 368 N.E.2d 870, 11 Ill. Dec. 262.) In Wipfler the defendant's mother relayed a police request to talk to him about some

burglaries. Defendant went to the police station after school. He was asked to come into a sergeant's office where, with the door closed, he was questioned by two police officers. The supreme court, applying the second of the two tests set out above, found that defendant went to the police station voluntarily, knowing that the police had wanted to reach him and knew where he was but had not attempted to take him into custody. At the station he was not searched, booked or fingerprinted. Under these circumstances the court concluded: "A reasonable, innocent man * * * would have been cognizant that this did not amount to arrest, in light of the total lack of compulsion by the police either in obtaining or retaining his presence at the station." (People v. Wipfler, 68 Ill. 2d 158, 167, 368 N.E.2d 870, 873, 11 Ill. Dec. 262, 265, emphasis added.) The court stated that because of their determination of this factor the intent of the police did not have to be established. The court did, however, note that "* * * the manner in which defendant's presence was obtained, and the information the police had about defendant prior to interrogation, lends [sic] credence to the testimony of [the officer] that defendant was not, in [the officer's] mind, under arrest at the time and that he could have left without police permission because there was 'nothing to hold him for.'" 68 Ill. 2d 158, 167, 368 N.E.2d 870, 873, 11 Ill. Dec. 262, 265, emphasis added.

It is clear from this summary that the relevant perceptions of the police pertain to whether coercion exists and whether defendant is in custody or is free to leave. This focus comports with the statutory definition of an arrest we have cited. In this cause the testimony of the arresting officers was they did not intend to "arrest" the defendants, but did intend to take them into custody for questioning.

They also testified that defendants would not have been free to leave. It is evident the distinction made by the officers was not a legal one: their intention to take the defendants into custody constituted the essence of an arrest. Therefore the testimony of these officers establishes their intent to arrest the defendants within the meaning of the term as construed by Illinois courts. The second facet of this test, the perception of an innocent man in the defendant's position, also establishes that there was an arrest. Defendants were approached by two officers, informed that they were to be transported to the police station for questioning, and then were searched for weapons. They were then transported in a police car to the police station and separately questioned. This is not analogous to the situation in Wipfler where a defendant received a police request to come to the station for questioning and voluntarily acquiesced on his own. Defendants were given no choice in the matter. Under these circumstances we conclude defendants were arrested when the police took them into custody on Magnolia Street.

Because we have determined that defendants were arrested at this initial police encounter, the issue becomes whether the officers had probable cause to make these arrests. The arresting officers, Douglas Glanz and John Birkenheier, testified at the motion to suppress hearing. Our review of that testimony indicates that the officers had the following information at the time of the arrests: Delores Irion was found dead at about 7 a.m. in Evanston on September 25, 1973. It had rained the night before but the victim's clothes were dry, suggesting she had been killed some time after midnight. The victim's automobile, a 1966 Cadillac, was missing. Defendant Creach was the victim's boyfriend and had been living

off and on with her for four weeks. He had been driving her car, taking her to work on occasion. Creach's mother had talked to him by telephone in Ohio. He told her he had the victim's 1966 Cadillac and had last seen her alive at about 1:30 on the morning of September 25, when he had left for Ohio in her car. He was in Ohio with a friend named Tom. When Creach was informed by his mother of Delores Irion's death he told her he would drive back to Chicago right away. The officers were shown a picture of Creach by his mother, but the only description they had of Tom was that he was a short youth with fair hair.

This information was manifestly insufficient to establish probable cause. The officers knew that defendant Creach had seen the victim at about 1:30 a.m. on the night she was killed and subsequently had driven to Ohio in her car, but they also knew he was her boyfriend, had been living with her, and had been driving her car in the past. They also knew that when informed of the murder he voluntarily returned to Illinois. At most the police had reason to question Creach concerning his activities, but mere suspicion is insufficient to establish probable cause. (People v. Jones (1959), 16 Ill. 2d 569, 158 N.E.2d 773; In re Brewer (1974), 24 Ill. App. 3d 330, 320 N.E.2d 340.) And the police knew much less concerning defendant Ruppert. They knew only that he had been in Ohio with Creach. Certainly this information would not warrant a man of reasonable caution in the belief that the defendants had robbed and murdered Delores Irion. Brinegar v. United States (1948), 338 U. S. 160, 93 L. Ed. 1879, 69 S. Ct. 1302; People v. Riszowski (1974), 22 Ill. App. 3d 741, 318 N.E.2d 10.

At the motion to suppress hearing the trial judge initially concluded that there was probable cause to arrest the defendants.

However defendants then filed a motion to reconsider and in denying this motion the judge indicated his belief that the police acted properly despite a lack of probable cause:

> "At this point there is a serious question as to whether or not there was probable cause for arrest. There is, however, no question that the persons last seeing the victim alive were the two defendants.
>
> "There is also argument, and reasonable men can differ as to whether or not there was what I might refer to as a chargeable arrest. And by that I mean whether or not were ready to charge either or both defendants with the crime of murder at that point.
>
> "There is in the law a provision as cited by defense, and although I believe it does not go as far as the facts in this case went, whereby a fellow citizen may be removed from whatever location to the police station for the purpose of making inquiry about the facts and circumstances of any crime that was in fact, that the police knew in fact to have been committed. In this case there was no question that a crime had in fact been committed. The victim's body had been recovered, and the police had already made an examination of the scene where the body was located.
>
> "Therefore, in summation on the question of the right of the Evanston police to detain or take into custody or arrest, as you will, the defendants in this case I believe that they have the authority

"under those exigent circumstances to do that which they did.

"There is further argument or may be further argument although the boys were patted down prior to their being taken by police vehicle to first the scene where they suggested the vehicle had been left, and then on to Evanston to the Evanston Police Department. Whether that constituted an arrest is debatable. Some may argue that they were merely asking, requesting the defendants to proceed with them for the purpose of further interrogation since they were the last persons to see the victim alive. They also had possession of a substantial item of property belonging to that victim.

"Be that as it may, however, I have found that there is in my judgment an in custody deliverance of both defendants from the homse [sic] at 5717 North Magnolia to the Evanston Police Department.

"It seems to me that what the Courts are trying to do, and as usual the facts don't fit into prior cases, each case being and rightly so considered separate and apart on its own factual situation, that under these circumstances the police officer acted as we would have them act. <u>It was not certain that either or both of the boys were involved in the homicide of the victim at that point</u>. It was known that they were the last parties to have seen the victim alive, that they did have an item of her property, and that they had proceeded out of state

"at approximately the same time that the police believed that the victim's life had been taken.

"I believe what they did was they were investigating the commission of a crime, that they did have the power to seek the fruits of the crime, and as here I believe that their actions and conduct were open and sincere. If we are to find a better alternative I could not suggest it. I don't believe that there was appropriate evidence for -- appropriate evidence for a warrant to issue because it still was not clear that these boys were in any way related to the crime. They did have items in their possession which may very well lead the police to the determination of someone who may have been involved in the crime. So they may be very serious suspects and at the same time material witnesses.

"In my judgment I am concluding that the police officers acted reasonably and that because of the exigent circumstances they had the right, that the City of Evanston police did have the right to act as they did within the city limits of Chicago which is in fact an adjacent municipality, and therefore part of the same police district." [Emphasis added.]

Of course we have determined that defendants were arrested at this point, and the absence of probable cause renders those arrests illegal.

The State asserts on appeal that other information, adduced at trial as having been obtained by other members of

the Evanston police department, was within the knowledge of the officers Glanz and Birkenheier at the time they arrested the defendants and provided them with probable cause. That additional information was that the victim had been shot with a .25 caliber automatic pistol, a box for a .25 caliber pistol was found in the victim's apartment, and the apartment had been locked with a key when the police reached it. We do not find that this evidence, even when coupled with the knowledge of officers Glanz and Birkenheier that defendant Creach had lived with the victim, provided them with probable cause. There was, of course, no indication that the victim's pistol, if she in fact owned one, was the weapon used to kill her. Nor was there any reason to suspect that the gun had been taken from the apartment by anyone other than the victim. Furthermore, the ordinary presumption that for purposes of probable cause the knowledge of one officer is imputed to the others involved in the cause (People v. Peak (1963), 29 Ill. 2d 343, 194 N.E.2d 322), does not apply here, for at the motion to suppress hearing officer Glanz was specifically asked whether the knowledge he had described at that hearing was all the information on the case that he possessed concerning the involvement of defendant Creach, and he stated that it was. And the only testimony concerning communication with other officers about the case prior to the arrests was that of Glanz, who had spoken to Detective Mitchem and received from him some of the information he related at the hearing. There was no evidence that the additional information cited by the State was communicated to the officers.

Because we have determined that the arrests of the defendants were illegal for lack of probable cause, we need not determine the defendants' contention that the Evanston police lacked authority to arrest them in Chicago.

When a defendant has been arrested without probable cause, statements by the defendant and other evidence obtained as a result of that arrest are inadmissible at trial unless the State can establish the existence of intervening

circumstances which dissipated the taint of the illegal arrest. (People v. Williams (1977), 53 Ill. App. 3d 266, 368 N.E.2d 679, 11 Ill. Dec. 128; Brown v. Illinois (1975), 422 U. S. 590, 45 L. Ed. 2d 416, 95 S. Ct. 2254; Wong Sun v. United States (1963), 371 U. S. 471, 9 L. Ed. 2d 441, 83 S. Ct. 407.) Defendants assert that their statements and other evidence used against them at trial should have been suppressed on this ground and, as independent bases, because of alleged violations of Miranda v. Arizona (1964), 384 U. S. 436, 16 L. Ed. 2d 694, 86 S. Ct. 1602, and, as to defendant Ruppert, because he did not intelligently and voluntarily waive his rights. In order to properly evaluate these claims it is necessary to review the sequence of events following the arrest of the defendants.

Defendants were arrested at about 9:45 a.m. Earlier, when the police had spoken to Mrs. Moore and informed her of their intention to take defendants into custody, she asked to accompany them, and the police agreed. Accordingly she got into the police car with the defendants and the two officers. In the car Mrs. Moore asked defendant Creach where the car was, and he said it was at Broadway and Belmont. Officer Glanz asked what the best way to get there was and Ruppert gave directions. Whey they reached that location and found the Cadillac there, Officer Birkenheier asked who had the keys to the car and Creach handed them to him. Defendants were then transported to the Evanston police station, arriving there at about 11:30 a.m. Creach was taken into one "interview room" with Officer Glanz, and Ruppert was taken into another with Officer Birkenheier. It was at this point that the defendants were advised for the first time of their Miranda rights. Officer Glanz testified that he fully advised Creach of his rights and that Creach stated he understood them. Officer Birkenheier, utilizing a form, informed Ruppert of all his rights under Miranda, except that in advising him of his right to an attorney he failed to specifically advise him that he had a right to the presence of an attorney during

questioning. Ruppert also stated that he understood his rights, according to Birkenheier's testimony.

After Creach was advised of his rights, he told Officer Glanz that on September 25, 1973, at about 1:30 in the morning, he and Ruppert decided to go to Ohio in the victim's Cadillac. They went to her apartment and she gave them permission to use the car as well as $50 for the trip. She also gave Creach the title and registration documents for the car so he could sell it for her there. Creach intended to find work in Ohio. During the questioning Officer Glanz observed blood spots on Creach's jacket and he asked him to remove the jacket. Creach told Glanz that he was wearing the same clothes as he had on when he left for Ohio. Subsequently at trial the jacket was admitted into evidence.

At this point Detective Kirkham arrived and told Officer Glanz that Ruppert was cooperating and that they were going to recover the gun. Glanz told Creach of this, but he persisted in his version of what had taken place, showing Glanz the title and registration papers he said Irion had given him. However, when the gun was recovered and brought to the station at about 2:30 p.m., Glanz showed it to Creach and Creach began crying, saying "I killed her, I killed her. She would not let me use her car to go to Ohio." Creach then related a different version of what had occurred. He and Ruppert went to the victim's apartment to get her Cadillac for the Ohio trip, but she refused. Creach argued with her and attempted to remove a gun from a night stand where he knew she kept it. She saw him, managed to take it from him, but then he recovered it. They decided to take a ride in the car, something Creach said they often did when they argued. Irion did not want Ruppert to go along but Creach insisted that he be allowed to come. Irion drove them to the location between the railroad tracks where they had parked many times before. She stopped

the car and she and Creach began to argue again. In the course of the argument Irion grabbed Creach's neck and began choking him. His throat was very tender from prior throat operations and he became enraged. He took out a pocket knife and slashed Irion's throat. She got out of the car and he followed her, stabbing her several times in the back. She walked away but Creach again approached and she began to choke him again. He stabbed her several times in the front part of her body and she fell to the ground. She called to him that she loved him and he told her that he would take her to the hospital. As he bent over her she again began to choke him. Creach pulled out his gun and fired it until it would not fire anymore. He jumped back in the car and drove with Ruppert to Ohio. They did not discover the purse in the car until they had left the scene, and Creach threw the purse into a river in Ohio. Creach explained a bandage on his finger, stating that he had cut himself while stabbing Irion. Glanz received from Creach $45, which had been taken from Irion's purse, and a small pocket knife. Creach told Glanz that this was not the knife he had used to stab Irion; he had dropped that knife near the stabbing location. The currency, the small pocket knife, and the title and registration papers were all introduced into evidence at trial.

After making this statement Creach asked to speak to his mother, who was at the station. Glanz brought her in and she said to Creach "Did you kill her.?" He responded "She should have never touched my neck." Creach's mother called a lawyer and after he arrived Creach declined to give a written statement. This was at about 3 p.m.

Later that evening Glanz brought Creach fresh clothes so his clothes could be inventoried. While changing, Creach rubbed a small wound on his shin, commenting that he thought one of the bullets had ricocheted and hit him in the leg.

Glanz asked if he meant off her head and Creach responded "no, off of one of the railroad tracks."

The questioning of Ruppert also began at about 11:30 a.m., after Officer Birkenheier had read him his rights from the pre-printed form, which Ruppert then signed. Ruppert stated that he went with Creach to Delores Irion's apartment. Ruppert stayed outside and Creach went up to the apartment, returned, and went up again. Ruppert and Creach then got into Irion's Cadillac and went to Ohio. They bought a tire and gasoline on the way.

Between 12:15 and 12:30 p.m. Officer Hennegan came in to question Ruppert, and Officer Birkenheier left. Hennegan advised Ruppert of all his Miranda rights and Ruppert stated that he understood them. Hennegan asked Ruppert how they had gotten the victim's car. Ruppert first stated that she had voluntarily loaned Creach and him the car and currency for the trip to Ohio. Hennegan told Ruppert he did not believe him, to which Ruppert responded "Danny did it." He then related that at 11 p.m. on September 24 he went to the area of Delores Irion's home with Creach. She had a 1966 Cadillac parked in Creach's garage at 5717 N. Magnolia in Chicago. Ruppert waited in that car while Creach went to Irion's apartment. A short time later Creach returned and said he tried to steal money from Irion but she had caught him and he had to return it. Creach went back to the apartment and returned with a .25 caliber automatic pistol he said he had taken from Irion. At that time they parked Irion's car in an alley. Ruppert stayed with the car and Creach went to the apartment for a third time, returning with Irion. Ruppert and Creach told her they needed a ride and she agreed to take them. The three entered the car, Irion at the wheel, Creach beside her and Ruppert in back. They directed her to an area

in Evanston. When they reached the vicinity of South Boulevard and Chicago in Evanston Creach told Irion to drive up a CTA right-of-way. She refused and drove past the location. Creach told her to drive there or he would kill her. She drove four blocks north to the northern entrance of the right-of-way and then drove onto it, stopping the car some distance into the road. Creach produced a pocket knife, reached over and cut the victim on the throat. She got out, as did Creach and Ruppert. She held her throat asking for a rag. Ruppert found one in the car, handed it to her and she held it to her throat. She asked to be taken to a hospital and Creach and Ruppert agreed. They all got into the car, this time with Creach at the wheel, Irion beside him and Ruppert again in the back. Creach reached over and put his arm around Irion's shoulders and stabbed her in the back. All three exited the car and Irion asked for help, saying she wanted to be taken to the hospital. Creach and Ruppert agreed. Irion got in behind the wheel and Ruppert got in beside her. But Creach walked to the driver's side and began firing a pistol through the open window in Irion's direction. As he began to fire Ruppert got out on the passenger's side and Irion followed him out and began to run down the right-of-way. Creach pursued and caught up with her a short distance from the car. There was a short struggle, Creach fired another shot, and Irion fell to the ground. Creach and Ruppert got back in the car and drove from the area. (On cross-examination Hennegan recalled that Ruppert told him that before they got in the car at this point Creach told him to get in.) The victim's purse was in the back seat and from it they took a Master Charge credit card and $140, which they divided evenly. They bought gasoline with the credit card on the way to Hamilton, Ohio where they stayed overnight. The next day they returned to Chicago, parking the car near the CTA tracks at Belmont where they secreted the pistol, a box of .25 caliber ammunition, and a man's wristwatch in the support

beam of the tracks. They then took the elevated train to Creach's home.

Hennegan asked Ruppert if he would take him to where these items were hidden, and Ruppert agreed to do so. On the way Hennegan asked Ruppert why he had taken the victim onto the CTA right-of-way. Ruppert stated that he intended to rob her at that location. Hennegan also asked about Ruppert's activities in Ohio. He said they had spoken to two of Creach's relatives, Delbert Smith and Albert Smith. Creach had showed Delbert Smith the .25 caliber automatic. Creach told Albert Smith that he had hit a woman the night before, but later said he was only kidding. In Ohio they had used Irion's credit card in an attempt to purchase stereo equipment and jewelry but a department store manager took the card from them. After this conversation Ruppert led the police to the location of the hidden items and they were recovered. At trial Irion's former boyfriend, Sander Hollabeck, identified the gun and the wristwatch as items he had bought and had last seen in the victim's apartment in September, 1973. Those items and the box of ammunition were admitted into evidence at trial.

Ruppert was returned to the station where Hennegan informed Assistant State's Attorney, John Divane, of the developments. Divane testified at the motion to suppress that at this time, about 3:00 p.m., he spoke to Ruppert, advising him of his Miranda rights, which Ruppert said he understood. Ruppert then made an oral statement to Divane. That statement was not introduced at trial, but Divane did state during the suppression hearing that it was substantially the same as a statement subsequently taken from the defendant and transcribed by a court reporter in the presence of Officer Hennegan. At trial that written statement was introduced into evidence. It was taken at about 3:15 p.m. Divane again advised

Ruppert of his Miranda rights before he took this second statement, and then a third time as he began to take the statement, except that the third warning did not include the advice that his statement could be used against him. Ruppert then gave a statement which was substantially the same as that he gave to Officer Hennegan, with the following additions. Delores Irion's home was at 5709 Magnolia. They intended to take her car without her permission. When Irion came out of the apartment with Creach she told Ruppert to get out of the car and he did so. Creach told Irion Ruppert was coming, and told Ruppert to get in. Ruppert first refused but Creach kept telling him to get in and he ultimately did so. Creach told Irion he wanted her to drive him some place. She did not want to but then got in and started driving. After Ruppert gave Irion the rag for her throat, Creach "made us all get back in the car." And after Creach first stabbed Irion and all three got out of the car, Ruppert told Creach he should take her to the hospital because she was bleeding badly, but Creach refused. During the trip to Ohio Creach kept the gun on the front seat. When they bought gasoline with the credit card, Ruppert signed for it. In Hamilton, Ohio, Creach told Ruppert to "put a rock on the purse." He did so and gave it to Creach, who threw it into a lake. Creach took half the money in Irion's purse and gave the other half to Ruppert. In the written statement Ruppert identified a gun as the one recovered from the elevated tracks and used before that by Creach to kill Irion.

After Ruppert gave this statement Hennegan asked Ruppert if he had any of the money left that was taken from Irion. He said he had $24 left, and gave it to Hennegan. This money was introduced into evidence at trial.

Defendant Creach contends that because he was not warned of his Miranda rights prior to his statement concerning the location of the Cadillac, that statement should have been suppressed along with any evidence concerning the Cadillac and evidence found in it. Although we agree that derivative evidence obtained as the result of a Miranda violation should be suppressed along with any statements made (Michigan v. Tucker (1974), 417 U. S. 433, 41 L. Ed. 2d 182, 94 S. Ct. 2357; U. S. ex rel. Hudson v. Cannon (7th Cir. 1976), 529 F. 2d 890), we find no Miranda violation on these facts. Creach's statement came in response to a question from his mother, who was in the police car because the police had granted her request to accompany her son to the station. There is no basis in the evidence to support defendant's speculation that the police had intentionally used defendant's mother to obtain this information, consequently this was not a police or police-directed question which would require a prior Miranda warning. (People v. Hawkins (1972), 53 Ill. 2d 181, 290 N.E.2d 231; People v. Brooks (1972), 51 Ill. 2d 156, 281 N.E.2d 326; compare Commonwealth v. Bordner (1968), 432 Pa. 405, 247 A. 2d 612.) Creach was given all the Miranda rights at the police station prior to police questioning and he makes no contention on appeal concerning the voluntariness of his statements made there.

But when defendant Ruppert was initially advised of his rights at the station he was not specifically advised that he had a right to counsel during any questioning. His rights were read to him from a form which stated:

"I, Thomas A. Ruppert, have been advised of my rights by officers of the Evanston, Illinois, Police Department. I have been told that I have the right to remain silent and that anything I say can and will be used against me in a court of law, and I have the right to the presence of an attorney to assist me prior to any questioning if I so desire, and also, that if I cannot afford an attorney, I have the right to have an attorney appointed for me prior to any questioning.

"Having been advised of those rights, I, Thomas A. Ruppert, agree to waive those rights and to answer the questions that the officers ask of me."

Defendant Ruppert correctly points out that the court in Miranda made clear that the right to counsel, of which a defendant must be warned before questioning, includes the right to have a lawyer present during any interrogation. The better practice would be to explicitly advise a defendant of that facet of his right to counsel, but our examination of the case law convinces us that the warnings given here were sufficient when viewed as a whole and not in isolated context. Thus in People v. Gazic (1975), 30 Ill. App. 3d 1063, 336 N.E. 2d 73, a general warning that defendant had a right to consult with a lawyer was held sufficient to warn him of his right to counsel at the interrogation. In People v. Ward (1976), 37 Ill. App. 3d 960, 347 N.E.2d 381, informing defendant of his right to obtain the services of a lawyer was deemed sufficient to warn him of his specific right to counsel during questioning. And in People v. Walker (1974), 18 Ill. App. 3d 351, 309 N.E.2d 716, it was held that advising defendant that he

had a right to an attorney and further advising him that he should obtain one was found to clearly convey to him his right to the presence of an attorney during questioning. Finally, in People v. Hoffman (1975), 32 Ill. App. 3d 785, 336 N.E.2d 209, adequate advice of the right to counsel was found where defendant was told he had a right to have an attorney present before any questions were asked and was also told that he could exercise any and all of his Miranda rights at any time he wished. In the instant case, defendant was told that he had a right to the assistance of counsel before being questioned and that if he could not afford one, counsel would be appointed before questioning. We find that this did suffice to inform defendant of his right to counsel under Miranda. Contra, People v. Green (1973), 14 Ill. App. 3d 972, 304 N.E.2d 32, cert. denied (1974), 417 U. S. 972, 41 L. Ed. 2d 1143, 94 S. Ct. 3179 (dictum, relying on United States v. Fox (2d Cir. 1968), 403 F. 2d 97; but see United States v. Lamia (2d Cir. 1970), 429 F. 2d 373, cert. denied (1970), 400 U. S. 907, 27 L. Ed. 2d 146, 91 S. Ct. 150; United States v. Cusumano (2d Cir. 1970), 429 F. 2d 378, cert. denied (1970), 400 U. S. 830, 27 L. Ed. 2d 61, 91 S. Ct. 61.).

Defendant Ruppert also asserts that because his written statement, taken by Assistant State's Attorney Divane, indicated that Divane did not at that time advise him the statement could be used against him, Miranda was violated and the statement should have been suppressed. However, by this point defendant had already been given his Miranda warnings four times and there was no requirement that any of them be repeated, consequently the omission of one element in this fifth warning was not error. People v. Hill (1968), 39 Ill. 2d 125, 233 N.E.2d 367, cert. denied (1968), 392 U. S. 936,

20 L. Ed. 2d 1394, 88 S. Ct. 2305; People v. Beamer (1978), 59 Ill. App. 3d 855, 376 N.E.2d 368, 17 Ill. Dec. 369.

3(a)

When the police took Ruppert into custody, they did not attempt to notify his parents, nor did they advise him that he had a right to such notification. Ruppert was seventeen years old at that time. He contends that the police had the duty to attempt to notify his parents that they had taken him into custody. Section 3-2 of the Juvenile Court Act (Ill. Rev. Stat. 1975, ch. 37, par. 703-2), requires a reasonable attempt at such notification when a minor is taken into custody under Section 3-1. (Ill. Rev. Stat. 1975, ch. 37, par. 703-1.) Section 3-1, in conjunction with Section 2-1 (Ill. Rev. Stat. 1975, ch. 37, par. 702-1), empowers law enforcement officers to take into temporary custody minors whom they deem to be delinquent, otherwise in need of supervision, neglected, or dependent, as well as for other reasons not relevant here. The State argues that the only potentially relevant status would be delinquency and that even that was not applicable because the statutory definition of a delinquent minor is restricted to those violating a law before their seventeenth birthday. (Ill. Rev. Stat. 1975, ch. 37, par. 702-2.) Therefore, they contend that notification requirements were not applicable. We need not determine the validity of this argument, however, because it is clear that violation of this notice requirement does not mandate suppression of evidence obtained following that violation. (People v. Steptore (1972), 51 Ill. 2d 208, 281 N.E.2d 642; People v. Zepeda (1970), 47 Ill. 2d 23, 265 N.E.2d 647.) At most, such a violation constitutes a factor in determining whether subsequent statements were voluntarily made. In re Stiff (1975), 32 Ill. App. 3d 971, 336 N.E.2d 619.

Defendant Ruppert also contends that his statements were not voluntarily made because he did not knowingly and voluntarily waive his rights. Defendant's own suppression-hearing testimony on this point was conflicting. He testified that he understood the rights contained on the form we have cited. But on direct examination he testified he was not aware that his statements could be used against him in court. He also testified that he understood all of the questions asked of him by Assistant State's Attorney Divane, and that he read and understood the written statement he gave to Divane. Ruppert claimed that Officer Hennegan told him he could go home if he told what happened and that if he did not tell, a "lie detector machine" would be used on him. It was stipulated that Hennegan would deny both these assertions.

Dr. Edward Kelleher, a certified psychiatrist and director of the Psychiatric Institute of the circuit court of Cook County, examined defendant Ruppert prior to trial, and testified at the motion to suppress hearing. He found that defendant had an I.Q. of 78, that of a borderline mental retardant individual. Dr. Kelleher testified that this classification meant that a person is slower to learn, though such a person should be able to reach the second year of high school, assuming a good school situation. Dr. Kelleher also stated that an electro-encephalogram showed the defendant had organic brain damage, but that this would not affect learning ability nor I.Q; the only possible effect he found in the defendant was a possible connection with defendant's tensions, excitability, or a complaint of a rapid heartbeat. During Kelleher's examination of Ruppert, Ruppert understood the questions and made coherent responses. He found no mental illness or psychosis, and it was his opinion that a person of defendant's intelligence level would understand the Miranda warnings.

Alfred Kirberg, a special-education teacher, testified that he taught Ruppert from 1969 to 1971 in a special class for 4th to 6th graders. He stated that Ruppert had reached his peak learning capacity at that time, that of a fifth grader or ten-year old. However, he also testified that he had not seen Ruppert since 1971 and had no opinion regarding his academic level on the date of the death of Delores Irion.

The question of whether defendant Ruppert knowingly and voluntarily waived his Miranda rights was for the trial court to determine based on the totality of the evidence. That determination should not be overturned unless it is contrary to the manifest weight of the evidence. (People v. Wipfler (1977), 68 Ill. 2d 158, 368 N.E.2d 870, 11 Ill. Dec. 262.) We recognize the special care and scrutiny required where a juvenile, especially one classified as a borderline-mental retardant, is involved. (People v. Simmons (1975), 60 Ill. 2d 173, 326 N.E.2d 383.) But in this cause there was direct expert testimony indicating that this factor did not affect the voluntariness of Ruppert's waiver. Furthermore, the trial court had the opportunity to observe the testimony of the defendant. The court concluded:

> "Insofar as Mr. Ruppert is concerned I would find that from my evaluation of his testimony, having seen him in fact testify from the stand, respond to questions, the method and mode of his response, his ability to respond, his coherence and conciseness in responding, he impressed me to the extent that I would have to find under these facts that he could in fact knowingly and intelligently waive his constitutional rights."

The court found that defendant Ruppert did knowingly and

intelligently waive his Miranda rights, and we find that determination to have ample support in the record.

4.

Both defendants and the State find support in Brown v. Illinois (1975), 422 U. S. 590, 45 L. Ed. 2d 416, 95 S. Ct. 2254, for their contentions concerning the exclusion of their statements and other evidence as the fruit of their illegal arrests. In Brown the defendant was arrested without probable cause and without a warrant by police who first broke into his apartment and searched it and then waited there for him to arrive. Defendant was taken to the police station, given his Miranda warnings and then questioned. Within two hours of his arrest he had given the police a signed statement concerning his involvement in the murder for which he had been arrested, and later that evening he gave a second statement. The police testimony was that they arrested the defendant so as to question him concerning the murder. Defendant's conviction was affirmed by the Illinois Supreme Court on the ground that the giving of the Miranda warnings broke the causal connection between the illegal arrest and the statements, thus permitting their introduction into evidence. The United States Supreme Court reversed, holding that the giving of Miranda warnings did not automatically establish that a subsequent confession was not obtained through exploitation of an illegal arrest. The court identified four factors which it deemed relevant to this inquiry: whether the Miranda requirements were satisfied, the temporal proximity of the arrest and the confession, the presence of intervening circumstances, and the purpose and flagrancy of the official misconduct. It was undisputed in Brown that the Miranda warnings were given and defendant understood them, but the court held this to be insufficient. It noted that less than two hours elapsed between the arrest and the first statement, and found that the second statement was clearly the fruit of the first. It

noted that there were no significant intervening circumstances such as those in Wong Sun, where defendant Wong Sun's confession was admitted despite his illegal arrest because the confession came only after he had been arraigned and released on his own recognizance. And it held that the illegality of the arrest was purposeful, as the arresting officers admitted that they made the arrest for investigation or questioning. The court also found that the manner of the arrest was apparently calculated to cause surprise and confusion.

In this case it is also clear that the purpose of the arrests of the defendants was for questioning; this was the police testimony. There was not the flagrant action of breaking into a home or making a surprise arrest with guns drawn, but nonetheless the fundamental misconduct remains the same as in Brown, making an arrest not on probable cause but only for purposes of taking a suspect into custody for questioning.

Nor were there any significant intervening circumstances between the arrests and the statements. An example of what the court in Brown envisioned as an intervening circumstance is found in Johnson v. Louisiana (1972), 406 U. S. 356, 32 L. Ed. 2d 152, 92 S. Ct. 1620, cited in Brown. There the defendant contended that his line-up identification was the product of his illegal arrest. The court found that because the defendant was brought before a magistrate where bail was set and he was advised of his rights and then had an attorney present during his line-up identification, there existed intervening circumstances breaking the causal connection between the allegedly illegal arrest and the identification.

As for temporal proximity, defendant Creach's first statement after his arrest, concerning the location of the Cadillac, came only moments after his arrest. The defendants' first substantive confessions were within several hours of

their arrests, and all their statements admitted at trial were made on the same day as their arrest. This situation is analogous to that in Brown, and differs from cases cited in Brown to illustrate what would constitute a time sequence establishing attenuation: United States v. Owen (5th Cir. 1974), 492 F. 2d 1100, cert. denied (1974), 419 U. S. 965, 42 L. Ed. 2d 180, 95 S. Ct. 227 (four days after release from custody defendant voluntarily returned and spoke to the authorities), and Commonwealth of Pennsylvania ex rel. Craig v. Maroney (3d Cir. 1965), 348 F. 2d 22, cert. denied (1966), 384 U. S. 1019, 16 L. Ed. 2d 1042, 86 S. Ct. 1966, (five days between the arrest and the confession, during which time defendant was arraigned and was specifically advised by his attorney not to make any statements.) Nor was the court concerned strictly with the passage of time in evaluating this factor, for it cited the case of Hale v. Henderson (6th Cir. 1973), 485 F. 2d 266, cert. denied (1974), 415 U. S. 930, 39 L. Ed. 2d 489, 94 S. Ct. 1442, where a defendant's confession made 42 hours into the period of his custody was excluded even though he had talked privately with his wife during that time, because there was no break in custody and little break, if any, in his custodial interrogation.

Thus, the only factor tending to support the admissibility of the evidence obtained by questioning the defendants is that they were given their Miranda rights before statements were taken at the police station. We find that this factor by itself was not sufficient to break the causal connection between the illegal arrests and the defendants' statements. Accordingly, the statements of the defendants and the evidence obtained as the result of those statements should have been suppressed. This includes defendant Creach's statement in the police car concerning the location of the Cadillac. Even though we have found no Miranda violation as to this

statement, the absence of any prior Miranda warnings provides support for our finding that the statement was the product of defendant Creach's illegal arrest. Nor do we find the fact that the questioning was initiated by Creach's mother to be a sufficient intervening cause. The police joined in this questioning by asking how to get to the address given, and once there they asked who had the keys. 1/ They thus provided the opportunity for Creach to make statements to his mother in their presence without warning him of possible consequences, and when that questioning was initiated they participated in it. This constituted exploitation of the illegal arrest and required suppression of the statement obtained as well as the evidence provided by the Cadillac itself.

At trial the defendants' statements constituted the basis of the evidence against them. Physical evidence obtained as the result of their statements, such as the gun and other evidence hidden by the defendants, the money they obtained from the victim's purse, their fingerprints from the Cadillac, and other evidence found in that car were used to corroborate those statements. We believe the admission of this evidence was prejudicial error, and it requires that defendants' convictions be reversed and the cause remanded for a new trial without the use of this evidence.

1/ Defendants have not raised the issue of whether these questions, which followed defendant Creach's statement to his mother, should have been preceded by Miranda warnings. Most of the information concerning these questions and the responses to them was adduced only at the hearing on the motion to suppress. At trial the testimony indicated only that someone in the car gave directions on how to get to Broadway and Belmont; there was no testimony that the car keys were demanded or produced. We need not consider the issue here, for any such testimony, as well as the car keys, would be inadmissible as the fruit of the illegal arrests, without regard to whether Miranda was also violated.

Defendant Creach also contends that the admission of his co-defendant Ruppert's statement, containing matters incriminating to Creach, constituted a Bruton violation (Bruton v. United States (1968), 391 U. S. 123, 20 L. Ed. 2d 476, 88 S. Ct. 1620), because Ruppert was not available at trial for cross-examination. But where, as here, the jury also hears defendant's own incriminating statements, amounting to a confession of the crime, there is no prejudicial error (People v. Rosochacki (1969), 41 Ill. 2d 483, 244 N.E.2d 136), and perhaps not even harmless error. People v. Bassett (1974), 56 Ill. 2d 285, 307 N.E.2d 359.

6(a)

Creach's defense at trial was insanity, and he contends that the State failed to prove beyond a reasonable doubt that he was sane at the time he committed the offenses at issue. Defendant presented the testimony of six lay witnesses on this issue. His mother testified that he was frequently beaten by his father and step-father and that she, too, was regularly beaten by his father in his presence. She also stated that Creach had taken drugs since he was in the second grade. Defendant Creach's cousin recalled two incidents in which Creach had intentionally driven a car into a garage wall and had thrown a dart into the cousin's leg; his opinion was that Creach was crazy. A neighbor testified that she had once attempted to intercede in an argument between Creach and his mother, and Creach struck the neighbor repeatedly. It was the neighbor's opinion, when asked of Creach's sanity, that he was "extremely angry." A female friend of the defendant testified to defendant's frequent drug usage, stating that when he took "speed" he drove his car wildly and would sometimes pass out. Her opinion was that Creach was not sane. Defendant's brother testified that Creach took drugs and "sniffed" glue frequently; his opinion was that around

September, 1973 defendant was "getting kind of crazy." Another friend of the defendant testified that on one occasion Creach could not remember what he had done earlier, and on another occasion she rode in a car with him when he drove recklessly, striking several cars and running through a fence; when she ran away he chased her and struck her. Her opinion was that in the summer of 1973 Creach was "nuts." Dr. Walter Feldman, a psychiatrist and attorney, examined Creach on three occasions in October, 1974, and directed psychological tests of him. In response to a hypothetical question which included the incidents to which the lay witnesses had testified as well as the facts of the murder of Delores Irion, Dr. Feldman testified that in his opinion, the hypothetical subject of the question was, on September 25, 1973, suffering from a mental disease or defect and as a result was unable to conform his conduct to the requirements of the law. Dr. Feldman equated a mental disease or defect with "impaired function."

In rebuttal the State presented the testimony of Dr. Kelleher, who examined the defendant twice in January, 1975 and administered a number of psychological tests. Dr. Kelleher found no psychoses, no neuroses and no mental illness, though he did believe defendant attempted to feign amnesia concerning the killing of Delores Irion. Dr. Kelleher's opinion was that defendant was sane at the time of the killing. The State also presented the lay testimony of Officers Birkenheier, Glanz, and Kirkham, and Assistant State's Attorney Divane, that based on their observation of Creach the day after the killing they believed him to be sane.

This question of defendant's mental condition at the time of the crime was for the jurors to determine as the triers of fact. (People v. Ford (1968), 39 Ill. 2d 318, 235 N.E.2d 576.

They were at liberty to accept or reject the testimony of the various lay and expert witnesses. (People v. Sims (1976), 35 Ill. App. 3d 401, 342 N.E.2d 256.) The evidence tending to establish defendant Creach's sanity is ample and the jury's resolution of that question is not so improbable or unsatisfactory as to raise a reasonable doubt as to defendant's sanity; for that reason we will not disturb that determination. People v. Ward (1975), 61 Ill. 2d 559, 338 N.E.2d 171.

6(b)

Nor do we find merit in defendant Ruppert's contention that his guilt as to the armed robbery was not established beyond a reasonable doubt. Defendant's conviction was based on a theory of accountability, as codified by Sections 5-1 and 5-2 of the Criminal Code. (Ill. Rev. Stat. 1975, ch. 38, pars. 5-1, 5-2.) Section 5-2 states in relevant part:

> "A person is legally accountable for the conduct of another when:
>
> (c) Either before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense. * * * (Ill. Rev. Stat. 1975, ch. 38, par. 5-2.)"

Some useful principles in determining accountability were set forth in People v. Morgan (1977), 67 Ill. 2d 1, 364 N.E. 2d 56, 7 Ill. Dec. 69, quoting from the appellate court decision which the Supreme Court was affirming:

"Mere presence or negative acquiescence is not enough to make one a principal to a crime. [Citations.] However, a person may aid or abet without actively participating in the overt act and if the proof shows that he was present at the commission of the crime without disapproving or opposing it, the trier of fact may consider this conduct in connection with other circumstances and thereby reach a conclusion that such person assented to the commission of the crime, lent to it his countenance and approval, and was thereby aiding and abetting it. [Citations.]" (67 Ill. 2d 1, 8-9, 364 N.E.2d 56, 60, 7 Ill. Dec. 69, 73.)

In Morgan several people agreed to rob the victim. The defendant agreed, according to his own statement, to do nothing but accompany the others to the scene. No evidence was introduced as to what defendant did during the robbery, but there was evidence that afterward he divided the proceeds with the others. This evidence was found sufficient to convict the defendant of armed robbery as well as the murder of the victim, who was killed in the course of the robbery. In this cause there was testimony that defendant admitted he intended to rob Delores Irion when he went to Evanston with her and Creach. There was also evidence showing that Ruppert admitted that he and Creach were planning to take the victim's car to Ohio without her permission. During the killing of Irion defendant Ruppert stood by and did nothing to attempt to intercede. By his own admission he took half of the victim's money when Creach offered it to him, and he used the victim's credit card to make purchases. This evidence, if believed by the jury, was sufficient to establish defendant Ruppert's accountability for the armed robbery of Delores Irion.

But defendant Ruppert also alleges error in the refusal of the trial court to instruct the jury on the affirmative defense of compulsion. The instruction requested by Ruppert states:

> "It is a defense to the charge made against a defendant that he acted under the compulsion of threat or menace of the imminent infliction of death or great bodily harm, if he reasonably believed death or great bodily harm would be inflicted upon him if he did not perform the conduct with which he is charged." (Illinois Pattern Jury Instructions, Criminal, No. 24.21 (2d ed. 1971).)

As we have noted, compulsion is an affirmative defense. (Ill. Rev. Stat. 1975, ch. 38, pars. 7-11, 7-14.) By statute, unless the State's evidence raises the issue, the defendant must raise it by presenting "some evidence"; once the issue is raised the State must prove defendant guilty as to this issue along with the other elements of the crime. (Ill. Rev. Stat. 1975, ch. 38, par. 3-2.) The case law in this State is conflicting as to the quantum of evidence necessary to raise such an affirmative defense. Generally an instruction is justified even where only very slight evidence supporting it is in the record. (People v. Kalpak (1957), 10 Ill. 2d 411, 140 N.E.2d 726.) And this standard has been applied to instructions on affirmative defenses. (People v. Adcock (1975), 29 Ill. App. 3d 917, 331 N.E.2d 573 (compulsion); People v. Cruz (Docket No. 77-1381, Nov. 29, 1978), ____ Ill. App. 3d _____, _____ N.E.2d _____, ____ Ill. Dec. _____ (self-defense); People v. Looney (1977),

46 Ill. App. 3d 404, 361 N.E.2d 18, 5 Ill. Dec. 18, (self-defense).) However, in People v. Redmond (1974), 59 Ill. 2d 328, 320 N.E.2d 321, the Illinois Supreme Court held that the affirmative defense of insanity was raised only where evidence on the issue was sufficient to raise a reasonable doubt as to the defendant's sanity. Although that opinion specifically concerned only insanity, the court relied on the Committee Comments relating generally to affirmative defenses, (S.H.A. (1972), ch. 38, par. 2-2, Committee Comments at pp. 192-193), wherein it was noted that unless the evidence was sufficient to warrant submitting the issue to the jury and to raise a reasonable doubt as to the defendant's guilt, it would be of little benefit to the defendant.

We need not determine which standard is applicable, for even under the stricter standard of Redmond we find that an instruction on compulsion was warranted. There was evidence indicating that from the time Creach emerged with Delores Irion from her apartment, he was armed with a gun. According to Ruppert's statements, which the State introduced into the record, when Irion and Creach first came out of the apartment, Irion told Ruppert to leave the car, and he complied. But then Creach told him to get back in; after first refusing, Ruppert finally got back in when Creach repeatedly told him to do so. In Ruppert's statement he also recalled that after Irion's throat had been cut and he had given her a rag, Creach made them both get back in the car. And after Creach had shot and apparently killed Irion, he again told Ruppert to get back in the car, and Ruppert complied. Finally, it was part of Ruppert's statement that on the way to Ohio, Creach kept the gun out on the front seat of the car. These factors could have been sufficient to raise a reasonable doubt in the minds of the jurors as to defendant's accountability; certainly they were "some evidence" of compulsion. The

failure to give this instruction was error and constitutes an independent basis for the reversal of defendant Ruppert's conviction and remandment for a new trial.

Finally, we find no merit in defendant Ruppert's contention that the trial court erred in failing to give his proposed instructions on accountability and accessories after the fact. The court properly gave the IPI instruction on accountability. That instruction specified that accountability was to be based on defendant's actions or intent before and during the offense; thus the jury was made aware that Ruppert could not be held accountable for Creach's actions because he had acted to conceal the crime or to help Creach escape. Because the jury was adequately instructed on this defense theory by the IPI instruction on accountability, the court did not err in refusing Ruppert's instruction which covered the same issue in a different manner. People v. Stringer (1972), 52 Ill. 2d 564, 289 N.E.2d 631.

Accordingly, for the reasons set forth in this opinion, the convictions of the defendants are reversed and the cause is remanded for retrial.

REVERSED AND REMANDED.

JOHNSON, J., concurs.

Mr. JUSTICE LINN, dissenting:

I must respectfully dissent from the majority's holding: (1) that defendant, John Creach, was arrested without probable cause;[1/] (2) that Creach's inculpatory statements, as well as certain other evidence presented against him, must be suppressed as fruit of the poisonous tree; and (3) that the trial court erred in not instructing the jury on the affirmative defense of compulsion with regard to defendant Ruppert.

I

The majority correctly concludes that defendant Creach was placed under arrest by Evanston police officers at the Magnolia Street location. (See, e.g., People v. Pruitt (1967), 79 Ill. App.2d 209, 216-17, 223 N.E.2d 537, 541-42.) The constitutional validity of his arrest focuses upon whether the police officers had probable cause to believe Creach had committed an offense. Henry v. United States (1959), 361 U.S. 98, 80 S.Ct. 168, 4 L.Ed.2d 134; Ill. Rev. Stat. (1975), ch. 38, par. 107-2(c); People v. Wright (1974), 56 Ill.2d 523, 309 N.E.2d 537.

At the conclusion of lengthy hearings on the motions to suppress, the trial court found that the Evanston police officers did have probable cause to arrest Creach.[2/] This finding may be disturbed on appeal only if it is "manifestly erroneous." (People v. Clay (1973), 55 Ill.2d 501, 505, 304 N.E.2d 280, 282.) It must also be remembered that Creach had the burden of proving that his arrest was based on less than probable cause. (People v.

1/ Since I agree with the majority that the Evanston police officers lacked probable cause to arrest defendant, Ruppert, I will not discuss that aspect of the case in this dissent.

2/ The majority contends that on a subsequent "motion to reconsider" the trial court recanted its holding and found that the Evanston police officers did not have probable cause to arrest Creach. I cannot agree. A reading of the motion to reconsider, the memorandum of law submitted in support thereof, and the corresponding arguments of counsel demonstrates that neither defendant requested a reconsideration of the trial court's earlier finding that probable cause to arrest did exist. Rather, in light of what were then recent cases, each defendant asked the trial court to reconsider its earlier finding that the Evanston police officers did have jurisdiction to arrest them in Chicago. Despite the statements of the trial court quoted by the majority, in my view, the trial court's denial of the motion to reconsider left intact its earlier holding which denied the defendants' motions to suppress and found that probable cause and jurisdiction to arrest did exist.

Ross (1978), 60 Ill. App.3d 857, 377 N.E.2d 230.) I cannot conclude that Creach met this burden or that the trial court's finding is manifestly erroneous.

Probable cause to arrest refers to that quantum of information which would lead a reasonable and prudent police officer to believe the defendant probably committed an offense. (People v. Robinson (1976), 62 Ill.2d 273, 342 N.E.2d 356.) This information need not be sufficient to establish guilt beyond a reasonable doubt (Draper v. United States (1959), 358 U.S. 307, 79 S.Ct. 329, 3 L.Ed.2d 327), nor must it be sufficient to prove guilt is more probable than not. All that is necessary, is that the information, upon which the arrest is based, constitute reasonable grounds for believing that guilt is more than a mere possibility.3/

Probable cause should be viewed from the vantage point of a police officers' training and experience, and "must be judged on the basis of [his] responsibility to prevent crime and to catch criminals." (People v. Robinson (1976), 62 Ill.2d 273, 277, 342 N.E.2d 356, 358.) As our supreme court recently stated in People v. Blitz (1977), 68 Ill.2d 287, 292-93, 369 N.E.2d 1238, 2140-41, quoting from United States v. Davis (D.C. Cir. 1972), 458 F.2d 819, 821:

> "Probable cause does not emanate from an antiseptic courtroom, a sterile library or a sacrosanct adytum, nor is it a pristine 'philosophical concept existing in a vacuum,' Bell v. United States, 102 U.S. App. D.C. 383, 386, 254 F.2d 82, 85 (1958), but rather it requires a pragmatic analysis of 'everyday life on which reasonable and prudent men, not legal technicians, act.' Brinegar v. United States, 338 U.S. 160, 175, 69 S.Ct. 1302, 1310, 93 L.Ed. 1879 (1949). It is to be viewed from the vantage point of a prudent, reasonable, cautious police officer on the scene at the time of the arrest guided by his experience and training. Jackson v. United States, 112 U.S. App. D.C. 260, 302 F.2d 194 (1962). It is 'a plastic concept whose existence depends on the facts and circumstances of the particular case.' Bailey v. United States, 128 U.S. App. D.C. 354, 357, 389 F.2d 305, 308 (1967). See McCray v. Illinois, 386 U.S. 300, 304, 87 S.Ct. 1056, 18 L.Ed.2d 62 (1967); Beck v. Ohio, supra, 379 U.S. [89] at 91, 85 S.Ct. 223, [13 L.Ed.2d 142]; Brinegar v. United States, supra, 338 U.S. at 175-176, 69 S.Ct. 1302.

3/ "'The substance of all the definitions' of probable cause 'is a reasonable ground for belief of guilt.' (Citations.)" (Brinegar v. United States (1949), 338 U.S. 160, 175, 69 S.Ct. 1302, 1310, 93 L.Ed. 1879, 1890.) "The test is essentially one of reasonableness." People v. Payne (1972), 6 Ill. App.3d 378, 380, 286 N.E.2d 35, 36.

Because of the kaleidoscopic myriad that goes into the probable cause mix 'seldom does a decision in one case handily dispose of the next.' Hinton v. United States, 137 U.S. App. D.C. 388, 391, 424 F.2d 876, 879 (1969). It is however the totality of these facts and circumstances which is the relevant consideration. Davis v. United States, 133 U.S. App. D.C. 172, 173, 409 F.2d 458, 459 (1969); Dixon v. United States, 111 U.S. App. D.C. 305, 306, 296 F.2d 427, 428 (1961). Viewed singly these factors may not be dispositive, yet when viewed in unison the puzzle may fit."

A well trained professional utilizes the unique talent and experience gained through his work. The professional police investigator is no exception. He will apply his skill and technical knowledge in carefully analyzing and evaluating all available data relating to the criminal activity which is the subject of his inquiry. The police investigator's experience-honed power of analytical conceptualization often "glues" together stray pieces of a particularly difficult puzzle, thereby giving rise to a reasonable probability that the crime involved was committed by a known suspect.

When the court applies legal standards to the probable cause issue presented by a particular case, it must remain aware of and give due deference to the police investigator's professionalism and experience and also his ability to decipher meaning from what may superficially appear to be innocent facts and circumstances. Furthermore, since many of the situations which law enforcement officers confront are more or less ambiguous, courts, by necessity, permit them broad discretion in determining whether probable cause to arrest does exist. Brinegar v. United States (1949), 338 U.S. 160, 176, 69 S.Ct. 1302, 1311, 93 L.Ed. 1879, 1891; People v. Wright (1974), 56 Ill.2d 523, 529, 309 N.E.2d 537, 540; see, e.g., People v. Coleman (1978), 63 Ill. App.3d 814, 380 N.E.2d 829.

In this case, the Evanston police officers possessed the following information at the time they arrested defendant Crouch: Delores Irion's body was found in Evanston at approximately 7 a.m. on September 25, 1973. She had been shot three times with a .25 caliber automatic pistol, twice in the head and once in the back, and also stabbed 12 times, in the back, chest, abdomen and knee. An empty box for a .25 caliber automatic pistol was found

in Delores Irion's apartment. The apartment had been locked with a key when the police reached it. Despite having rained heavily the night before, Delores Irion's clothing was dry, suggesting she had been killed sometime after midnight. The victim's automobile, a 1966 Cadillac, was missing. The police were informed that John Creach, the son of Mrs. Dolly Moore, the victim's next door neighbor, had been living with Ms. Irion for the past month. During this time, Creach had been driving Delores Irion's automobile. Mrs. Moore informed police that Creach had called her from Ohio. Creach told his mother he had Delores Irion's 1966 Cadillac and had last seen her alive at 1:30 a.m., the morning of September 25, when he had left for Ohio in her car. Creach was in Ohio with a friend named Tom. When Creach was informed by his mother of Delores Irion's death, he told her he would drive back to Chicago right away. No explanation was offered as to why Creach had suddenly taken the victim's automobile and left for Ohio at 1:30 a.m. The police department's investigation indicated that Creach was the last person to see Delores Irion alive.

Although these factors viewed individually may not be dispositive of the probable cause issue, their sum total dictates only one conclusion: the Evanston police officers had a reasonable basis for their belief that Creach probably murdered Delores Irion. Consequently, their arrest of Creach was legally justified. It must be borne in mind that probability is the touchstone, not certainty. Based upon this information, I readily conclude that the trial court's finding of probable cause was proper.

The majority questions whether certain factors listed above may properly be considered in our review of the probable cause to arrest issue. Although not revealed at the motion to suppress hearing, it was later disclosed at trial that the Evanston police department had obtained the following information, prior to arresting Creach: (1) Delores Irion had been shot with a .25 caliber pistol; (2) a box for a .25 caliber pistol had been found in her apartment; and (3) the apartment was locked with a key when the police reached it. According to the majority, the two arresting officers were not personally aware of this information when they took Creach into custody.

I believe that even without this information the police officers had probable cause to arrest Creach. Additionally, although this information was not presented at the motion to suppress hearing, it may properly be considered by us in reviewing defendant's contention that the trial court erred in finding probable cause to arrest did exist. People v. Braden (1966), 34 Ill.2d 516, 216 N.E.2d 808; People v. Glanton (1975), 33 Ill. App.3d 124, 338 N.E.2d 30.

The fact the arresting officers may not have had this information within their personal knowledge, at the time Creach was taken into custody, is irrelevant. Probable cause must be evaluated on the basis of the collective information possessed by the law enforcement agency or particular investigative unit involved, rather than solely upon the information possessed by the officers who actually make the arrest. (People v. Parks (1971), 48 Ill.2d 232, 269 N.E.2d 484, cert. denied, 404 U.S. 1020, 92 S.Ct. 692, 30 L.Ed.2d 669; People v. Beard (1976), 35 Ill. App.3d 725, 342 N.E.2d 343; United States v. Stratton (8th Cir. 1972), 453 F.2d 36, cert. denied, 405 U.S. 1069, 92 S.Ct. 1515, 31 L.Ed.2d 800; Smith v. United States (D.C. Cir. 1966), 358 F.2d 833.) As one court stated:

> "Defendant argues that because the arresting officer did not have sufficient knowledge or information to establish probable cause, the arrest was illegal. This is not the correct test. The test is whether the law-enforcement agency as a corporate body possessed sufficient information to establish probable cause. (Citations.) In this case probable cause was established by all (the) information possessed by the police as a unit and therefore the arrest was lawful." State v. Stark (1970), 288 Minn. 286, 290-91, 179 N.W.2d 597, 600, cert. denied, 402 U.S. 930, 91 S.Ct. 1529, 28 L.Ed.2d 864; accord Johnson v. State (1977), 75 Wis.2d 344, 249 N.W.2d 593.

The record in this case discloses that several officers of the Evanston police department were working in close concert with one another in investigating Delores Irion's murder. The record also demonstrates that information was freely exchanged among these officers during the course of that investigation. Consequently, in light of the above principle, the knowledge of each officer involved in the investigation should be imputed to the rest.

Nevertheless, the majority holds unpersuasively that the above principle is not applicable to this case:

> "(The) ordinary presumption that for purposes of probable cause the knowledge of one officer is imputed to the others involved in the cause (citation), does not apply here, for at the motion to suppress hearing Officer Glanz (one of the arresting officers) was specifically asked whether the knowledge he had described at that hearing was all the information on the case that he (personally) possessed concerning the involvement of defendant Creach, and he stated that it was."

Glanz's statement, however, does not contradict and the majority does not challenge, the testimony later adduced at trial that additional information, at the time of Creach's arrest, was possessed by other police officers involved in the investigation. Indeed, Glanz's statement does not even indicate that the other arresting officer, Birkenheier, was ignorant of this additional information. In any event, the above principle correctly demonstrates that the arresting officers need not have been personally aware of all the information possessed by their investigative agency as a unit. Therefore, I fail to understand how Glanz's statement -- which merely indicates that he, and possibly his partner, were not personally aware of additional information possessed by other police officers involved in the investigation -- renders this principle inapplicable.

Viewing the total circumstances from the vantage point of a police officer's training and experience, I am of the opinion that there was a reasonable basis for the belief that Creach probably murdered Delores Irion. I would, therefore, conclude that his arrest was based upon probable cause, and that the inculpatory statements, as well as the other evidence attributable to his arrest, were properly admitted.

II

Creach contends that even if probable cause did exist, the Evanston police lacked authority to arrest him in Chicago. I disagree.

The common law rule limited the authority of police officers to the territorial boundaries of the municipality. (People v. Carnivale (1975), 61 Ill.2d 57, 329 N.E.2d 193.) This rule was later modified by sections 7-4-7 and 7-4-8 of the Illinois Municipal Code:

"The territory which is embraced within the corporate limits of adjoining municipalities within any county in this State shall be a police district." (Emphasis added) Ill. Rev. Stat. 1975, ch. 24, par. 7-4-7.

"The police of any municipality in such a police district may go into any part of the district to suppress a riot, to preserve the peace, and to protect the lives, rights, and property of citizens. For these purposes, the mayor of any municipality in the district, and the chiefs of police therein, shall use the police forces under their control anywhere in the district." (Emphasis added) Ill. Rev. Stat. 1975, ch. 24, par. 7-4-8.4/

We take judicial notice that Chicago and Evanston are adjoining municipalities within the same county, and, therefore, are part of the same police district. (See People v. Lawson (1976), 36 Ill. App.3d 767, 345 N.E.2d 41.) The question presented is whether the arrest of Creach in Chicago, was within the extra-territorial power bestowed on the Evanston police by section 7-4-8.

The Evanston police were investigating the brutal and savage murder of Delores Irion, a Chicago female resident, whose dead body was found within the municipal boundaries of Evanston. The serious nature of this crime posed a very real threat to the physical safety of the other residents within the police district. The concern generated by this vicious crime was evidenced by the manpower immediately assigned to the case by the Evanston police department.

Early in its investigation, the Evanston police acquired reasonable grounds to believe that defendant, Creach, had murdered Delores Irion. They also had reason to believe that Creach had fled to Ohio following the culmination of his act. Creach's mother informed them that when her son had called from Ohio and was informed of Delores Irion's murder, he volunteered to return to Chicago "right away." Creach was expected to return to Chicago the night of September 25. He did not show.

In the early morning hours of September 26, Officers Glanz and Birkenheier were patrolling the Chicago neighborhood, where Creach and the victim had lived, in search of Delores Irion's automobile. At approximately 9:30 a.m., they spotted Creach walking down the

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4/ The court's statement in People v. Clark (1977), 46 Ill. App. 3d 240, 242-43, 360 N.E.2d 1160, 1162-63, that the "hot" pursuit theory is the only exception to the common law rule limiting a police officer authority to the boundaries of his own municipality, is clearly erroneous.

street toward his mother's home. In my view, the arrest of Creach at this time was necessary "to preserve the peace and to protect the lives (and) rights * * * of citizens" (Ill. Rev. Stat. 1975, ch. 24, par. 7-4-8). It would have been absurd and dangerous for the Evanston police officers, under the facts presented by this case, to have dropped everything, and awaited the arrival of a Chicago police officer before placing Creach under arrest. I would, therefore, conclude that the Evanston police had authority to arrest Creach in Chicago.

III

The majority holds that the trial court erred, with regard to defendant Ruppert, in refusing to instruct the jury on the affirmative defense of compulsion (Ill. Rev. Stat. 1975, ch. 38, pars. 7-11, 7-14). I disagree.

Confusion has been generated with regard to the quantum of evidence which must be introduced to raise the issue of an affirmative defense (See Ill. Rev. Stat. 1975, ch. 38, par. 3-2), and, thereby, to warrant the submission of an instruction to the jury on that defense. Most cases indicate that a jury instruction on an affirmative defense is warranted even though only slight evidence is presented in support thereof. (See, e.g., People v. Looney (1977), 46 Ill. App.3d 404, 361 N.E.2d 18.) The State contends, however, that in People v. Redmond (1974), 59 Ill.2d 328, 320 N.E.2d 321, the Illinois Supreme Court intimated a stricter standard: that a jury instruction on an affirmative defense should be submitted only where the evidence presented in support thereof is sufficient to raise a reasonable doubt of defendant's guilt.

While I have serious reservations with regard to the State's broad interpretation of Redmond, I find it unnecessary to determine which standard is applicable to this case. For, in my view, the evidence presented was insufficient, under either standard, to warrant submitting an instruction to the jury on the defense of compulsion.

The evidence presented at trial demonstrates that Ruppert and Creach had planned to steal money from Delores Irion, Creach's girlfriend, and then drive to Ohio in her car. Ruppert waited

in Delores Irion's Cadillac while Creach entered the victim's apartment. When Creach returned a short time later he told Ruppert Ms. Irion had caught him trying to steal some of her money. Creach then returned to the apartment and emerged with a .25 caliber pistol he had taken from the victim. Creach went back to the apartment yet a third time, and returned with Delores Irion.

In finding that an instruction on compulsion was warranted, the majority relies on the following evidence:

> "(W)hen Irion and Creach * * * came out of the apartment, Irion told Ruppert to leave the car, and he complied. But then Creach told him to get back in; after first refusing, Ruppert finally got back in when Creach repeatedly told him to do so. In Ruppert's statement he also recalled that after Irion's throat had been cut and he had given her a rag, Creach made them both get back in the car. And after Creach had shot and apparently killed Irion, he again told Ruppert to get back in the car, and Ruppert complied. Finally, it was part of Ruppert's statement that on the way to Ohio, Creach kept the gun out on the front seat of the car."

This evidence merely indicates that Creach was the leader of the two men with regard to the armed robbery and murder scenario. There is no evidence to support Ruppert's claim that his conduct was compelled under threat of death or great bodily harm. Creach never threatened Ruppert, verbally, physically, or even by implication, with the .25 caliber pistol. Furthermore, Ruppert never mentioned in or out of court that he participated in the armed robbery and murder of Delores Irion because he feared Creach.

Considering the fact that Ruppert admitted he had intended to rob Delores Irion all along, that Ruppert waited in the victim's car for Creach to return, knowing Creach was armed with a dangerous weapon, and that there was no testimony, or evidence whatsoever from which it could be inferred, that Ruppert was in fear for his own safety, the trial court properly refused to instruct the jury on the affirmative defense of compulsion. There was no evidence to support such a defense.

Accordingly, for the reasons stated and to the extent noted, I dissent.

Docket No. 51888—Agenda 11—November 1979.
THE PEOPLE OF THE STATE OF ILLINOIS, Appellant, v. JOHN CREACH *et al.*, Appellees.

MR. JUSTICE MORAN delivered the opinion of the court:

The body of Dolores Irion was found at approximately 7 a.m. on September 25, 1973, lying near the CTA tracks in Evanston. She had died there as a result of receiving multiple stab and gunshot wounds. In connection therewith, defendants, John Creach and Thomas Ruppert, were charged with murder and armed robbery. The circuit court of Cook County adjudged Creach guilty of murder and armed robbery, and Ruppert guilty of armed robbery. The appellate court, in a split decision, reversed the convictions and remanded for a new trial. (69 Ill. App. 3d 874.) We granted the State leave to appeal.

The only contentions made by the State are (1) the defendants were not arrested at their initial confrontation with the police; (2) even if defendants were arrested at such time, probable cause existed for their arrest; and (3) the appellate court erred in holding that the trial court should have instructed the jury on the affirmative defense of compulsion as to defendant Ruppert. Because of our holding herein, it is unnecessary that we resolve the last stated issue.

Defendants filed a pretrial motion to suppress certain statements and other evidence. At the hearing on the motion to suppress, Evanston police officers Glanz and Birkenheier testified as to facts and circumstances known to them prior to confronting the defendants. According to the officers, Detective Mitchem of the Evanston Police Department told them that he had spoken to Creach's mother, Dolly Moore, during the day on which Dolores Irion's body was discovered. Mrs. Moore, who lived next door to the victim in Chicago, told Detective Mitchem that she had had a telephone conversation earlier that day with her son, who was in Ohio.

The officers also testified that shortly after 8 a.m. on the following day, September 26, 1973, they went to the home of Mrs. Moore. She repeated the telephone conversation she had with her son the previous day. In addition, she stated to the officers that she informed her son, during the same telephone conversation, that Dolores Irion had been murdered; that Creach responded that he was in Ohio with a friend, Tom; and that he had last seen Dolores Irion at 1:30 a.m. on September 25, 1973, when he left for Ohio in her 1966 Cadillac. During this telephone conversation Mrs. Moore asked her son to come home immediately; Creach responded that he would. Mrs. Moore described Tom to the officers as a short youth with

- Appendix B -

fair hair. Mrs. Moore also informed the officers that Creach had been living with Irion periodically during the last four weeks, had been driving Irion's car, and had been taking her to and from work.

The officers also related that the Evanston police had independently confirmed that the victim's car was missing, that it had rained heavily until about midnight on the evening of September 24, 1973, but that, when the victim's body was discovered, the clothing was dry, indicating that the victim had not been killed until after midnight. The police knew of no one other than Creach who had seen the victim alive after that time.

Further, while at the home of Mrs. Moore, Officer Glanz was shown a photograph of Creach. The officers told Mrs. Moore that they were going to take the defendants, upon their return from Ohio, to the Evanston police station for questioning. The officers then returned to their squad car to maintain a surveillance over Mrs. Moore's home. At approximately 9:30 a.m., they observed the defendants approach Mrs. Moore's home on foot. Officer Glanz admitted that, at this point in time, the officers took the defendants into custody from which they were not free to leave, that they "patted [the defendants'] clothing down," and then transported the defendants to the Evanston police station.

The trial court found that the defendants were arrested at the time of their initial contact with the police in front of Mrs. Moore's residence, and that there was probable cause for the arrest of both defendants. It therefore denied the motion to suppress. The appellate court agreed that the defendants were arrested at their initial encounter with the police, but held that probable cause for the arrests was lacking.

The State contends that the defendants were not arrested until after they were transported to the Evanston police station. In support of its position, the State relies principally upon this court's decision in *People v. Wipfler* (1977), 68 Ill. 2d 158. We, however, find that case to be factually distinguishable from and inapplicable to the case before us. Rather, we hold the instant case to be controlled by the recent United States Supreme Court decision in *Dunaway v. New York* (1979), ––– U.S. –––, 60 L. Ed. 2d 824, 99 S. Ct. 2248. *Dunaway* held that detention for custodial interrogation, regardless of whether it is technically labeled an arrest, intrudes so severely on interests protected by the fourth amendment as to require the existence of probable cause to arrest. The circumstances to which the court applied the traditional probable cause standard were as follows. The defendant was taken from a neighbor's home to a police car, transported to a

police station, and placed in an interrogation room. He would not have been free to leave the custody of the officers. The court expressly declined to apply to this situation the balancing test which it had adopted in *Terry v. Ohio* (1968), 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868, for judging the propriety of certain fourth amendment "seizures" substantially less intrusive than arrests.

The circumstances in the case at bar are indistinguishable in all pertinent aspects from those in *Dunaway*. During the hearing on the motion to suppress, Officer Glanz testified that, at their initial encounter with the defendants, he and Officer Birkenheier took the defendants into custody from which they would not have been free to leave, and that the defendants' clothing was patted down. Although Birkenheier was not, at that hearing, questioned about the officers' initial contact with the defendants, he testified at trial that "We approached the two subjects, identified ourselves, and conducted a frisk." He stated further that defendants were advised that "They would have to come with us to the Evanston police station."

The State points out that the defendants returned from Ohio voluntarily. In this connection, the *Dunaway* court noted that the lower court had found that the case did not involve a situation wherein the defendant voluntarily appeared at the police station in response to a police request. Regardless of the voluntariness of the defendants' return from Ohio, it is clear from the evidence that their transport to the police station was involuntary. (—— U.S. ——, ——, ——, n.6, 60 L. Ed. 2d 824, 831, 832 n.6, 99 S. Ct. 2248, 2252, 2253 n.6.) Finally, it is of no import that this detention of the defendants may have occurred during an investigative, rather than an accusatory stage. (—— U.S. ——, ——, 60 L. Ed. 2d 824, 837, 99 S. Ct. 2248, 2257.) For these reasons we find no merit to the State's first contention.

The State next argues that, even if, for fourth amendment purposes, defendants were arrested at the time of their initial encounter with the police, probable cause existed for their arrest. Probable cause to arrest exists "when the facts and circumstances within the arresting officer's knowledge are sufficient to warrant a man of reasonable caution in believing that an offense has been committed and that the person arrested has committed the offense." (*People v. Robinson* (1976), 62 Ill. 2d 273, 276. See also *People v. Wright* (1974), 56 Ill. 2d 523, 528-29, quoting from *Brinegar v. United States* (1949), 338 U.S. 160, 175-76, 93 L. Ed. 1879, 1890, 69 S. Ct. 1302, 1310-11; *Dunaway v. New York* (1979), ——

U.S. ——, —— n.9, 60 L. Ed. 2d 824, 833 n.9, 99 S. Ct. 2248, 2254 n.9.) This court has stated:

> "Whether or not probable cause for an arrest exists in a particular case depends upon the totality of the facts and circumstances known to the officers when the arrest was made. [Citations.] In deciding the question of probable cause in a particular case the courts deal with probabilities and are not disposed to be unduly technical. These probabilities are the factual and practical considerations of everyday life on which reasonable men, not legal technicians, act." *People v. Clay* (1973), 55 Ill. 2d 501, 504-05.

We hold that there was sufficient evidence introduced at the hearing on the motion to suppress for the trial court to rule that, at the time that Officers Glanz and Birkenheier took defendant Creach into custody, probable cause existed for his arrest. The officers knew that Creach had been living with the victim, that she most likely had been killed sometime after midnight on September 25, 1973, that Creach had last seen her at 1:30 a.m. on that date, just 5½ hours prior to the time the body was discovered, and that he had unexplainedly left for Ohio in the victim's car. We conclude that, having these facts in mind, Officers Glanz and Birkenheier were reasonably justified in believing that Creach was responsible for the victim's death.

The only evidence available as to Ruppert, however, was that he was a short youth with fair hair, was a friend of Creach, and was with Creach in Ohio. This evidence was manifestly insufficient to establish probable cause for the arrest of Ruppert. We note that, with respect to searches, "probable cause particularized with respect to [the] person *** cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search or seize another or to search the premises where the person may happen to be." (*Ybarra v. Illinois* (1979), —— U.S. ——, ——, 62 L. Ed. 2d 238, 245, —— S. Ct. ——, ——.) Similarly, probable cause to arrest a particular individual does not arise merely from the existence of probable cause to arrest another person in the company of that individual.

As to defendant Creach, we reverse the portion of the appellate court judgment which reversed his conviction, and affirm the judgment of the circuit court. As to defendant Ruppert, the appellate court judgment, reversing his conviction and remanding for retrial, is affirmed.

Appellate court affirmed in part and reversed in part; circuit court affirmed in part.